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In the Supreme Court

OF THE
United States

OCTOBER TERM 1944

No. 644

MARIO JOSEPH PACMAN,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF CERTIORARI
to the United States Circuit Court of Appeals
for the Ninth Circuit
and
BRIEF IN SUPPORT THEREOF.**

MARIO JOSEPH PACMAN,
453 So. Bonnie Brae, Los Angeles 5, California,
Petitioner in Propria Persona.



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*To the Honorable Harlan Fiske Stone, Chief Justice
of the United States, and to the Honorable Asso-
ciate Justices of the Supreme Court of the United
States:*

Your petitioner, Mario Joseph Pacman, hereby
prays that a writ of certiorari may be granted direct-
ing the Circuit Court of Appeals of the United States
for the Ninth Circuit to certify to this Court, for

review and determination, the case of Mario Joseph Pacman, appellant, versus The United States of America, appellee, being Cause No. 10,362 in the United States Circuit Court of Appeals for the Ninth Circuit.

JURISDICTIONAL STATEMENT.

Petitioner contends that this Supreme Court of the United States has jurisdiction to review the conviction in said action as conferred by: Article III, Section 2 of the Constitution of the United States, and Articles I, IV, V, VI, VIII, and XIV of the amendments to the Constitution of the United States; Section 240 Judicial Code; Title 28, Section 350, United States Code; Rules 12 and 38 of said Supreme Court; Rules of said Supreme Court promulgated May 7, 1934, for Criminal Cases; Section 311, Title 50, U. S. Code Annotated, and known canons of propriety referring to due process and intent.

Similar cases relied upon for supporting this jurisdiction are *Vierick v. United States*, 318 U. S. 236; and *Ex parte Milligan*, 71 U. S. 2, 18 L. Ed. 281.

The decision of the Circuit Court of Appeals is not yet reported, but was rendered August 28, 1944, by a majority of the Court; a concurring opinion was filed by Judge Healy August 28, 1944; a petition for rehearing was duly filed September 26, 1944, and denied on September 30, 1944. (R. 158.)

STATUTES INVOLVED.

The statutes involved are Article I, Section 9, Clause 3; Article III, Sections 1-2 of the Constitution of the United States; and Articles IV, V, VI, VIII, I, and XIV of the Amendments to the Constitution of the United States; as well as the Selective Service and Training Act of 1940; Regulation 601.5; Regulation 628.1; Regulation 642.2; and Regulation 642.3 of the 1942 Selective Service Regulations; Section 311, Title 50, United States Code Annotated; plus recognized canons of propriety relating to intent and due process.

QUESTIONS PRESENTED.

(1) Without probable judicial intervention has any Local Draft Board the authority to charge a registrant with a criminal indictment before it has administered its known administrative procedure, before said registrant is a delinquent according to the Selective Service definition of a delinquent, and after said Draft Board has unfairly and arbitrarily denied said registrant an administrative remedy known to the Draft Board?

(2) May one whose only error is failure to declare he cannot serve his Government—one, who, instead of refusing service, requested repeatedly the right to serve in military units where he may serve conscientiously and well— be arrested without probable cause and without due process, and be later convicted with insufficient evidence, when relevant, material docu-

mentary evidence from Selective Service correspondence file and testimony disprove any criminal intent?

(3) Should a Court of justice prohibit, sanction, or condone the distortion of testimony where such will result in furnishing a reviewer with erroneous conceptions with which to form a true conclusion, regardless of whether this was caused by error, perfunctory acts, or wilful intent, jointly or separately?

(4) When an accused offers sufficient relevant and material documentary evidence to prove beyond any reasonable doubt that there was no intention to commit a crime, and no intention to commit a crime is proved, may he justly be found guilty of intentionally committing a supposed crime?

(5) May prosecuting counsel appearing with the authority of the United States Government before a jury employ unfair tactical artifices to influence and prejudice said jury?

(6) May detrimental distortions of fact prevent a proper true determination of worthy assignments of errors?

THE IMPORTANCE OF THE QUESTIONS INVOLVED.

It is important that this Honorable Court grant certiorari because of the importance of the questions involved which have heretofore not been passed upon or made effective by this Honorable Court.

If without exhausting its known administrative procedure, any Local Draft Board may obtain and

prosecute a criminal indictment without probable judicial intervention, such unlimited authority possessed by those who were not required to display a standard of competence which assures its execution with propriety is injurious to the whole people, as well as to the accused; the temperament and emotion of a nation during a time of war permits a greater possibility of the miscarriage of justice, and it is deemed dictatorial power should not be in the hands of those who may possess only ordinary competence.

Providence has willed sufficient relevant documentary evidence in this case to deem it important that some minimum standard of intent defense be permitted, or that *knowingly, wilfully, and feloniously* be removed from these many particular indictments.

The whole record also shows such distortions as to warrant a reaffirmation of the minimum quality of true concepts that will be accepted by the Courts of justice from those professionally engaged in and connected with the administration and procedure toward justice. *Such a reaffirmation will enhance the regard and value of justice to all the people.*

STATEMENT OF THE CASE.

Petitioner is thirty-seven years of age, unmarried, and a citizen of the United States by derivation through his father. In 1942, he was an employee of the State of California. He was born in Italy. When he was a small child, his father left petitioner and his

brother with petitioner's mother and her people in Italy and came to the United States. After the death of petitioner's mother, when petitioner was about five years of age, petitioner's father returned to Italy, remarried, and brought his new wife, petitioner and petitioner's brother to the United States, where they settled in a coal mining community in Pennsylvania. When petitioner was fourteen years of age and had completed only the fifth grade of school, his father took him from school and placed him to work in the coal mines. At the age of about nineteen years, petitioner left this work. After struggling to reestablish himself, petitioner realized his inadequacy to cope with present educational standards set down by modern society, by reason of his limited formal education; however, he carried on as a law-abiding citizen as best he could, working industriously in various occupations. In 1934 further realizing his limitations, petitioner returned to school and in approximately two years, by working night and day, completed and received a diploma from both the eighth grade and from high school. During all these many years, he had read avidly of literary works of a philosophical and religious nature, and by reason of his early conditioning and his long and constant effort to improve himself, he became sensitive, retiring and of a pacifistic nature.

Therefore, petitioner was and is a conscientious objector, who, in recognition of his obligation to the United States Government and to society, and in conformity with his own abiding convictions, came to the conclusion that his service in the military forces must

be confined to doing preservation and salvation service anywhere; doing anything defensive within its dangerous but recognized borders, short of killing or directly assisting to kill; doing work of national importance, without pay; or any other socially constructive civilian duty. (Selective Service Questionnaire (Exhibit "2"); Conscientious Objector's Form (Exhibit "3"); Letters to Local Draft Board written by petitioner stating his views and convictions (Exhibits "4", "5", "E" and "8").)

However, what petitioner could conscientiously do did not then fulfill the import or 1942 definition of 1-A-O classification assignments, which had a broad interpretation. Since petitioner could not swear to do anything commanded within the 1942 premise of 1-A-O classification, without mental reservation, *his Draft Board construed his request to be that for classification 4-E.* (Exhibit "7".) Petitioner's appeal Board decided that he was not entitled to any classification except 4-E, but reserved judgment as to 4-E until it received a report from the Department of Justice. (R. 59, and Rep. Tr. 64-78.)* From the testimony given by the representative of the Appeal Board, the *sole reason* for later denying the 4-E classification *was based upon this report.* (Exhibit "B"; Rep. Tr. 70; R. 60-61.) Petitioner contended that he had been denied due process of law by the hearing officer, because he was called before a representative of the Department of Justice and certain facts were

*R. indicates Transcript of Record; Rep. Tr. indicates Reporter's Transcript of Proceedings tendered to this Honorable Court.

partially disclosed to him in such a manner that petitioner had no way of refuting them at the time, as he would have been able to do had the facts been fully and fairly disclosed and had he understood them. That petitioner had also received a form from the Department of Justice before the interview, in which it was stated he could request certain information from them; that by registered letter he had done so, but such information was refused.

After the denial of the 4-E classification, petitioner then received a 1-A-O appeal classification card on September 1, 1942. The next day, at his first opportunity, petitioner went to the office of his Draft Board, which day was September 2nd, and examined the report of the Department of Justice, at which time he discovered and learned that the report relied upon contained statements made by persons who had had no personal knowledge of petitioner during his adulthood, and, in fact, had not even seen petitioner for approximately eighteen years, and by persons having personal and other motives disintitling them to belief. The same day, September 2nd, petitioner informed the Draft Board by a telegram (Exhibit "C"), requesting stay of pending induction until word was received from the National or State Directors, as shown by testimony. (Rep. Tr. pp. 126-128.) That petitioner prepared a lengthy and careful refutation of the statements contained in the report of the Department of Justice (Exhibit "K") which was later, and within three days, furnished to the National and State Directors of Selective Service.

The following day, September 3rd, induction order issued, accompanied with a letter stating, "A stay of induction can only be ordered by the State or National Directors of Selective Service". (Exhibit "12"; R. 86.) This order and letter were received by petitioner on September 4th. On the day of receipt of same, petitioner immediately sent identical telegrams to the National and State Directors, which stated as follows: "Will appreciate a stay of induction pending review which I shall respect". (Exhibits "J" and "M".) The same telegram being sent to the National Service Board of Religious Objectors. (Exhibit "O".)

On September 5th, petitioner received from the State Selective Service Director, in answer to his telegram, the following telegram (Exhibit "A"):

"Reurtel. Upon receipt your correspondence. Will give matter consideration and determine appropriate action. K H Leitch State Director of Selective Service."

On September 5th, the day of receipt of said telegram petitioner sent, as promised, his prepared refutation of the report of the Department of Justice to the State Director, relying upon and believing that the promised consideration and appropriate action meant a stay until reviewed, or until further word was received. Petitioner deemed it illogical, unreasonable and unnecessary to request corroboration of the State Director's act from the Local Draft Board, a subordinate of the State Director, and dismissed the induction order from his mind, *relying* upon the prom-

ised consideration and appropriate action by the State Director.

On September 15th, petitioner received a Notice of Suspected Delinquency, which was the first intimation of any kind that petitioner had been misled by the telegram of the State Director (Exhibit "A"), and testimony shows that petitioner immediately answered the notice the day following induction date, *and was arbitrarily denied any hearing or consideration* (Rep. Tr. pp. 47, 215); this action was later found to be a Draft Board violation of the then effective Selective Service Regulation 642.3. (R. 81.)

Petitioner then contacted the Assistant United States Attorney, to whom petitioner sent a registered letter on September 17th, and received no answer. Receipt of a letter (Exhibit "11") from the State Director of Selective Service on September 18th informed petitioner that his review was denied. Petitioner had promised to respect this, and awaited an induction order which he would obey to the letter (as an inductee) because he had only tried to point out that he could not take an unqualified military oath without mental reservation on the then recognized import of 1-A-O, as then defined and administered. 1-A-O inductees could then be directed to supply ammunition, etc., this has been changed since. The later receipt of a letter from the State Director (Exhibit "Q") encouraged petitioner to send to the Draft Board Chairman a letter (Exhibit "13") requesting consideration not for a deferment, but for Work of National Importance without subsistence remuneration, previ-

ously construed by the Local Board to be petitioner's proper classification.

While at his work in a public office, petitioner was then arrested, and charged with wilful disobedience of an induction order, notwithstanding Regulations of the Selective Service Manual of 1942. (Regulations 628.1, 642.2 (a), 642.3, and 601.5.) Reasonable bail was denied, and although petitioner had been a resident of Los Angeles, California, for many years and a civil service employee, bail was placed at \$7500. Petitioner was held three days in the county jail, during which time articles appeared in the public press injurious to his reputation and reflecting upon the State Department of which he was an employee. When petitioner was later brought before the regular United States Commissioner, petitioner was given an opportunity to volunteer without qualification. Its acceptance meant he would be held in confinement while they gave him a physical examination, held until the Army wished him, and then delivered to the Army in irons; petitioner met prisoners claiming to have been waiting induction thirty days. Because of these circumstances, *but particularly because petitioner at all times was acting and motivated only by convictions of the deepest sincerity, and the further fact that he unqualifiedly believed that he was not guilty of the crime charged as to wilful violation of an induction order, and that he wished to clear his record with his employer, petitioner requested a removal of said charges, so that he could obey an induction order voluntarily, but this was refused to him,*

to a minister, upon a second request, and to his attorney, upon a third request.

Petitioner had great faith in justice and because of this faith concluded that if the Court were to know the true facts it would dismiss an indictment which charged "wilful intent". To this was later added the advice of his counsel that to permit a "guilty" plea was to be untrue to his principles. By going into service in consideration of non-prosecution at this stage, he would be admitting guilt of a charge of which he believed himself innocent. Petitioner was confident that conviction could not follow this indictment; that this acquittal would be followed by another induction order requiring an oath to a premise so broad as to necessitate him taking it with mental reservation; so petitioner made efforts to find and found a military unit into which he could volunteer and serve conscientiously and well. Testimony substantiates this. (Rep. Tr. pp. 224-235.)

Before sentence was pronounced, petitioner again requested a medical assignment, and it was denied. Shortly after sentencing of petitioner, the Secretary of War publicly announced that 1-A-O draftees would be thenceforth assigned to the Medical Department for service anywhere. Although the petitioner desired a new trial, in order to remove the stigma of a conviction of a crime of which he sincerely believed himself to be innocent, petitioner earnestly requested of Fort MacArthur, of his Draft Board, of the State Director of Selective Service, and again of his Draft Board, and of the District Court Justice, and the

United States Circuit Court that he be inducted into military service, asking only that he be assured of his right to remove the conviction on its true merits by way of appeal, without delaying his entry into military service. This request made early in 1943 is in the file of the Clerk of the Circuit Court, and was, through no fault of petitioner, never made known to the Court.

GROUND'S FOR GRANTING WRIT OF CERTIORARI.

(1) The District Court and the Circuit Court erred in not dismissing indictment when it was clearly stated that the Local Draft Board had knowingly and unfairly denied the registrant administrative redress in such a way as to prohibit the registrant doing anything further to correct an unintentional error. Such unlimited authority in the hands of any Draft Board without judicial restraint is deemed prohibited by the Fourth and Fifth Amendments of the United States Constitution, as well as Article III of the Constitution.

(2) The District Court erred in not dismissing indictment when it found that the reason defendant was not then in military service was a questionable indictment publicly executed without due process and without probable cause resulting in injurious and prejudicial detriment.

(3) The Circuit Court erred because it had before it testimony distorted in such a manner as to

give an erroneous conception of pertinent facts. Since reasonably true conclusions can hardly be arrived at through the use of erroneous conceptions of factors, it is believed a Court of justice should accept only summaries which convey true conceptions. To sanction or condone distorted summaries which give any competent reviewer misconceptions of factors, is to deny the right to true conceptions which are necessary to determine a true conclusion and just decision.

(4) Although intent may be presumed with some certainty in some instances, the District Court erred because there is no reason for such a presumption when there is sufficient pertinent evidence offered to prove beyond a reasonable doubt that the intent was only to serve conscientiously wherever such service may be rendered well, especially where no criminal intent is proven, and the crime is only supposed to exist; there may have been no crime.

(5) To permit prosecuting counsel, with well recognized Governmental authority to employ artifices, unfair tactics, and emotions with which to prejudicially influence and encourage a quick verdict of guilty, is making the Government a party to a standard to which the United States Government should not condescend because the recognized canons of propriety were transgressed.

(6) The Circuit Court erred in not considering thirty-four assignments of error raised by appellant.

PRAYER.

Wherefore your Petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record in the proceedings of that Court in Mario Joseph Pacman v. United States of America, No. 10,362, to the end that this case may be reviewed and determined by this Court as provided by the Constitution and Statutes of the United States; and that the judgment of the United States Circuit Court of Appeals be reversed by this Court; that petitioner stands ready to serve his sentence or do conscientious objector's service during the interim of this review prayed for; it is the conviction of a crime which he honestly believes himself to be innocent, not the punishment, from which he prays relief.

Dated, San Francisco, California,

October 25, 1944.

MARIO JOSEPH PACMAN,

Petitioner in Propria Persona.